

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05 10307 JLT

VERMONT MUTUAL INSURANCE COMPANY
as subrogee of TIMOTHY D. STEIN and
WAYNE ROLF
Plaintiff,

v.

DAVID'S FLOOR SERVICE, INC.
and
MIN DANG, d/b/a
DAVID'S FLOOR SERVICE,
Defendants
Third-Party Plaintiffs
and
MUOI BUI a/k/a MUOI PHAM,
AS ADMINISTRATRIX OF
THE ESTATE OF TOAN BUI
d/b/a/ BLESS HARDWOODS

v.

MUOI BUI a/k/a MUOI PHAM,
AS ADMINISTRATRIX OF
THE ESTATE OF TOAN BUI
d/b/a/ BLESS HARDWOODS
Third-Party Defendants

MOTION IN LIMINE OF DAVID'S FLOOR SERVICE INC.
CONCERNING OSHA REPORT

The defendant David's Floor Service Inc. moves that this Court exclude from evidence the OSHA report generated following the fire, and that this Court preclude any reference to the OSHA report, the settlement agreement or any OSHA investigation into

the incident. Copies of the OSHA documents are attached. The grounds for this motion are as follows:

Apart from the Settlement Agreement, the only other component of the OSHA report are the citations and alleged violations, and the fault to be assigned to David's Floor Service Inc. Such opinions and conclusions are not admissible under the public documents exception to the hearsay rule. Indeed, the Massachusetts Appeals Court has directly considered the admissibility of OSHA citations in negligence actions, and has held that they are not admissible. Herson v. New Boston Garden Corp., 40 Mass. App. Ct. 779, 792-93 (1996).

Under the Federal Rules of Evidence, the OSHA citations do not meet the requirements of Rule 803(8) Public records and Reports as the citations were contested and ultimately a settlement was reached between the parties. The settlement agreement, paragraph 9, specifically notes that the stipulations and actions with respect to the OSHA case should not be used for any other purpose.

The defendant,
David's Floor Service, Inc.,
by its attorney,

Date: August 11, 2006

/s/ Susan Johnson Bowen
Susan Johnson Bowen
BBO#561543
Warren, Hensley & Bowen LLP

33 Broad Street
Suite 800
Boston, MA 02109-4208
(617) 542-4130
Sue@attorneyswhb.com

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on August 11, 2006.

/s/Susan Johnson Bowen

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TO-US DEPT OF LABOR

FROM-6175658115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration
Valley Office Park
13 Branch Street
Methuen, MA 01844
Phone: (617)565-8110 FAX: (617)565-8115



Citation and Notification of Penalty

To:
Davids Floor Service Inc.
and its successors
35 Osgood Street
Somerville, MA 02143

Inspection Number: 306103052
Inspection Date(s): 09/07/2004-02/04/2005
Issuance Date: 02/15/2005

Inspection Site:
4 Foskett Street
Somerville, MA 02144

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal

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TO-US DEPT OF LABOR

FROM-6175658115

12:03pm

10-06-05 09-06-05 Received

conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For violations which you do not contest, you should notify the U.S. Department of Labor Area Office promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation. Please inform the Area Office in writing of the abatement steps you have taken and of their dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (OSHA 3000) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to

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To: US DEPT OF LABOR

From: 6175558115

Received 10-06-05 12:03pm

review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

FOI 005

Citation and Notification of Penalty

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ID: 6175558115

OCT-06-05 10:56 FROM: METHUEN MA OFFICE

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To: US DEPT OF LABOR

From: 6175558115

12:03pm

Received 10-06-05

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 02/15/2005. The conference will be held at the OSHA office located at Valley Office Park, 13 Branch Street, Methuen, MA, 01844 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

FOI 006

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TO-US DEPT OF LABOR

From: 6175558115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004 - 02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Serious**

29 CFR 1910.134(c)(1): There was no written respiratory protection program with specific workplace procedures in a workplace where respirators were necessary to protect the employees' health or were required by the employer:
4 Foskett Street, Somerville, MA and other worksites
On and about 09/02/04 and before, the employer had no written respiratory program in place for employees who were required to wear respirators.

Date By Which Violation Must Be Abated: 03/10/2005
Proposed Penalty: \$7000.00

Citation 1 Item 1b Type of Violation: **Serious**

29 CFR 1910.134(d)(1)(iii): In selecting and providing respirators for employees, the employer did not identify and evaluate the respiratory hazard(s) in the workplace:
4 Foskett Street, Somerville, MA and other worksites
On and about 09/04/04 and before, the employer failed to evaluate the respiratory hazards for employees who worked with Harco lacquer sealer (containing toluene, xylene and other hazardous chemicals) and other similar floor refinishing products and the employer made no reasonable estimate of employee exposures to respiratory hazards created by sanding floor surfaces and working with floor finishing products containing toluene and other hazardous chemicals.

Date By Which Violation Must Be Abated: 02/23/2005

FOI 007

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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TO-US DEPT OF LABOR

From-6175658115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004 - 02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

Citation 1 Item 1c Type of Violation: Serious

29 CFR 1910.134(k)(1): The employer failed to provide effective training to employees who were required to use respirators, to ensure that each employee demonstrated knowledge of at least the matters set forth in paragraphs (k)(1)(i) through (k)(1)(vii):

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not provide respirator training for employees using Harco lacquer sealer and other similar floor refinishing products, as to:

- (i) why the respirators were necessary and how improper fit, usage, or maintenance could compromise the protective effect of the respirator;
- (ii) what the limitations and capabilities of the respirators were;
- (iii) how to use the respirators effectively in emergency situations, including situations in which the respirators malfunctioned;
- (iv) how to inspect, put on and remove, use, and check the seals of the respirators;
- (v) what the procedures were for maintenance and storage of the respirators;
- (vi) how to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and
- (vii) the general requirements of the Respiratory Protection section.

Date By Which Violation Must be Abated: 03/10/2005

Citation 1 Item 1d Type of Violation: Serious

29 CFR 1910.134(k)(3): The employer failed to provide respiratory protection training as set forth in (k)(1) prior to requiring employees to use respirators in the workplace.

4 Foskett Street, Somerville, MA and other worksites

On and about 09/04/04 and before, the employer did not provide respirator training for employees before requiring them to work with respirators.

Date By Which Violation Must be Abated: 03/10/2005

FOI 008

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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TO-US DEPT OF LABOR

FROM: 6175658115

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U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foscett Street, Somerville, MA 02144

Citation 1 Item 1e Type of Violation: **Serious**

29 CFR 1910.134(k)(5): For employees who were required to use respirators in the workplace, the employer failed to administer retraining on an annual basis and when the following situations occurred: when changes in the workplace or the respirator type rendered previous training obsolete; when inadequacies in the employee's knowledge or use of the respirator indicated that the employee had not retained the requisite understanding or skill; and when any other situation arose in which retraining appeared necessary to ensure safe respirator use.

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer provided no annual or other necessary retraining in respirators to employees who were required to work with respirators.

Date By Which Violation Must be Abated: 03/15/2005

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1910.134(e)(1): The employer did not provide a medical evaluations as defined in "e" to determine the employee's ability to use a respirator, before the employees were fit tested or required to use the respirators in the workplace.

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer failed to provide medical evaluations for employees who were required to wear respirators.

Date By Which Violation Must be Abated: 03/15/2005
Proposed Penalty: \$7000.00

FOI 009

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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TO-US DEPT OF LABOR

From: 6175658115

12:03pm

10-06-05

Received

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004 - 02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1910.134(f)(1): The employer did not ensure that, before employee(s) were required to use a tight-fitting facepiece respirator, they passed an appropriate qualitative fit test (QLFT) or quantitative fit test (QNFT) as stated and referenced in (f):

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not perform respirator fit testing on employees before requiring them to wear respirators.

Date By Which Violation Must be Abated: 03/15/2005

Citation 1 Item 3 Type of Violation: **Serious**

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at each workplace a written hazard communication program which at least described how the criteria specified in 29 CFR 1910.1200(e)(1)(i), (f), (g), and (h) would be met:

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not develop, implement, and/or maintain at each workplace a written hazard communication program, failing to provide employees with detailed information as to the properties of Harco lacquer sealer and other hazardous and/or flammable chemicals with which they worked. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: 03/15/2005
Proposed Penalty: \$ 7000.00

FOI 010

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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TO-US DEPT OF LABOR

From: 6175658115

12:03pm

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Received

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

Citation 1 Item 4 Type of Violation: Serious

29 CFR 1910.1200(g)(10): The employer did not keep material safety data sheets readily accessible during each work shift to employees in their work areas:

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not have material safety data sheets readily available to employees who worked with Harco lacquer sealer and/or other hazardous, flammable chemicals. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: Corrected During Inspection
Proposed Penalty: \$7,000.00

FOI 011

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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TO-US DEPT OF LABOR

From 6175658115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.

Citation 1 Item 5a Type of Violation: Serious

29 CFR 1910.1200(h)(3)(i): The employer did not provide employees with training that included at least the methods and observations that may be used to detect presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, etc.):

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not train employees in the methods and observations that may be used to detect the levels of hazardous chemicals (such as Harco lacquer sealer and other similar floor refinishing products) present or released in the work area. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: 03/10/2005
Proposed Penalty: \$ 7000.00

Citation 1 Item 5b Type of Violation: Serious

1910.1200(h)(3)(ii): The employer did not provide employees with training that included at least the physical and health hazards of the chemicals in the work area:

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not train employees in the physical and health hazards of the chemicals with which they worked, such as Harco lacquer sealer and other similar floor refinishing products. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: 03/10/2005

FOI 012

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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TO-US DEPT OF LABOR

FROM-6175658115

12:03PM

10-06-05

Received

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foscett Street, Somerville, MA 02144

Citation 1 Item 5c Type of Violation: **Serious**

29 CFR 1910.1200(h)(3)(iii): The employer did not provide employees with training that included at least the measures that employees could take to protect themselves from the hazards of chemicals in their work areas, including specific procedures implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used:

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not train employees adequately in appropriate work practices, emergency procedures and personal protective equipment, in order to protect themselves from the hazards of the chemicals with which they worked, such as Harco lacquer sealer and other similar floor refinishing products. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: 03/15/2005

Citation 1 Item 5d Type of Violation: **Serious**

29 CFR 1910.1200(h)(3)(iv): The employer did not provide employees with training that included at least the details of the employer's hazard communication program, including an explanation of the labeling system and material safety data sheets, and how employees could obtain and use the appropriate hazard information:

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer did not provide the employees with hazard communication details, including explanation of the labeling system and material safety data sheets for the hazardous chemicals with which they worked (such as Harco lacquer sealer and other similar floor refinishing products) and how employees could have obtained and used the appropriate hazard information to protect themselves. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit and chronic exposure has been associated with permanent brain and nervous system damage.

Date By Which Violation Must be Abated: 03/15/2005

FOI 013

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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OSHA-2 (Rev. 9/93)

Page 12

TO-US DEPT OF LABOR

From-6175558115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foscett Street, Somerville, MA 02144

Citation 1 Item 5e Type of Violation: **Serious**

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer failed to instruct each employee in the recognition and avoidance of unsafe conditions in the floor refinishing trade and failed to instruct each employee in the applicable regulations and work practices to control or eliminate hazards in their work, e.g.: exposure to hazardous chemicals and vapors, flammable liquids in the presence of ignition sources.

Date By Which Violation Must be Abated: 02/19/2005

Citation 1 Item 6 Type of Violation: **Serious**

29 CFR 1926.20(b)(2): The employer did not provide for frequent and regular inspections of the job sites, materials, and equipment to be made by competent persons designated by the employer to fulfill its accident prevention responsibilities:

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, no frequent, regular inspections of job sites, materials and equipment were made by designated, competent persons with regard to the fire hazards, electrical hazards, chemical hazards, and respiratory hazards to which employees were exposed.

Date By Which Violation Must be Abated: 02/28/2005

Proposed Penalty: \$ 7000.00

FOI 014

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Page 14

To: US DEPT OF LABOR

From: 6175558115

Received 10-06-05 12:03pm

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foskett Street, Somerville, MA 02144

Citation 1 Item 7 Type of Violation: **Serious**

29 CFR 1926.57(a): The employer's use of ventilation as an engineering control method with respect to hazardous vapor was not installed and operated according to the requirements of this section:

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer provided inadequate or no ventilation for employees using Harco lacquer sealer and other similar floor refinishing products.

Date By Which Violation Must be Abated: 02/23/2005
Proposed Penalty: \$ 7000.00

Citation 1 Item 8 Type of Violation: **Serious**

29 CFR 1926.150(a)(1): The employer did not develop a fire protection program to be followed throughout all phases of the construction or demolition work:

4 Foskett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, the employer failed to develop a fire protection program for employees working with Harco lacquer sealer and other similar flammable products.

Date By Which Violation Must be Abated: 02/15/2005
Proposed Penalty: \$ 7000.00

FOI 015

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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ID: 6175558115

OCT-06-05 11:00 FROM: METHUEN MA OFFICE

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TO US DEPT OF LABOR

FROM: 6175658115

12:03pm

10-06-05

Received

U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 306103052
Inspection Dates: 09/07/2004-02/04/2005
Issuance Date: 02/15/2005



Citation and Notification of Penalty

Company Name: Davids Floor Service Inc.
Inspection Site: 4 Foscett Street, Somerville, MA 02144

Citation 1 Item 9 Type of Violation: **Serious**

29 CFR 1926.150(c)(1)(i): The employer failed to provide a fire extinguisher, rated not less than 2A, for each 3,000 square feet of the building area (refer to (c)(1)(x) and Table F-1 for a guide for selecting the appropriate portable fire extinguisher):

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, no fire extinguishers were provided to employees who worked with Harco lacquer sealer and other similar flammable products. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit.

Date By Which Violation Must be Abated: 02/23/2005
Proposed Penalty: \$ 7000.00

Citation 1 Item 10 Type of Violation: **Serious**

29 CFR 1926.152(f)(3): The employer failed to ensure that, where flammable liquids may be used, there were no open flames or other sources of ignition within 50 feet or greater clearance when conditions warranted:

4 Foscett Street, Somerville, MA and other worksites

On and about 09/02/04 and before, employees used Harco lacquer sealer and/or other similar flammable liquids despite the presence of open flames or ignition sources within 50 feet or, where conditions warranted, greater clearance. Harco lacquer sealer has a flashpoint of 29 degrees Fahrenheit.

Date By Which Violation Must be Abated: 02/23/2005
Proposed Penalty: \$ 7000.00

Richard J. Fazzio
RICHARD J. FAZZIO
Area Director

FOI 016

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

Citation and Notification of Penalty

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OSHA-2 (Rev. 9/93)

Received 10-06-05 12:03pm From: 6175658115 To: US DEPT OF LABOR Page 16

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, United States *
Department of Labor, * DOCKET NO. 05-468
Complainant, *
v. * REGION I
David's Floor Service, Inc., *
Respondent. * INSPECTION NO. 306103052

SETTLEMENT AGREEMENT

Complainant and Respondent hereby stipulate and agree that:

- (1) On February 15, 2005 Respondent was cited for alleged violations of the Occupational Safety and Health Act of 1970, 29 USC 651, et seq., hereinafter referred to as the Act and was issued a Notification of Proposed Penalties in the total amount of \$70,000.
- (2) Respondent, an employer within the meaning of section 3(5) of the Act, duly filed with a representative of the Secretary of Labor a notice of intent to contest all citations and penalties. This notice was duly transmitted to the Review Commission and it is agreed that jurisdiction of this proceeding is conferred upon said Commission by section 10(c) of the Act.
- (3) The Secretary of Labor has filed a Complaint herein stating with particularity the violations alleged, the penalty proposed and the issues in contest before the Commission.
- (4) Complainant and Respondent have agreed to resolve this matter, without the necessity

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of further pleadings, as follows:

(A) the penalties are amended to \$28,000 to be paid in 14 installments by no later than the 15th of each month commencing on September 1, 2005 and ending on October 1, 2006, with Respondent transmitting certified checks in the amount of \$2,000 made payable to "Occupational Safety and Health Administration" to the OSHA Boston-North Area Office, Attn: Area Director;

(B) on the first business day of each month from December, 2005 through October, 2006, Respondent will fax to the OSHA Office in Methuen, MA [fax number 617-565-8115] a calendar of the dates, times and addresses of the jobs that Respondent has already booked for the month; and

(C) as final abatement of all citation items, Respondent agrees:

(1) to work cooperatively with OSHA and other appropriate organizations to develop in writing, train employees and implement in-house by November 30, 2005 a best practices program on safety and health issues in the floor refinishing industry (said program to address management commitment and employee involvement, safety and health training, worksite analyses for the purpose of hazard identification and prevention, hazard control measures, and monitoring and enforcement), and

(2) to present in three outreach sessions to the Massachusetts-based Vietnamese community its best practices program on safety and health issues in the floor refinishing industry, with all sessions completed by June 1, 2006.

(D) Respondent will document its final abatement measures as outlined above in subparagraph (4)(C) by:

(1) transmitting to the OSHA Office in Methuen, MA by December 15, 2005 a copy of its (4)(C) (1) best practices program, including training, checklists, implementation and any other follow-through measures; and

(2) transmitting to the OSHA Office in Methuen, MA at least two weeks in advance the times, dates, and places where it will present each of the outreach sessions noted in (4)(C)(2).

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(5) In view of the aforesaid, Respondent hereby withdraws its Notice of Contest and the parties agree that the citations and proposed penalties and the abatement measures and dates as amended by this agreement, shall be affirmed and become the final Order of the Occupational Safety and Health Review Commission.

(6) Respondent certifies that it has achieved interim abatement of the violations alleged. For each item in the citation, Respondent will submit to the issuing area director an interim Abatement Certification as required by 29 CFR 1903.19(c). For each item such certification shall be submitted within 30 days of signing this agreement.

(7) Respondent further agrees that failure to fulfill in timely fashion the payment schedule or the final abatement tasks set forth in paragraph (4) shall cause the penalty amount due to revert automatically to the balance due of the entire originally proposed total penalty of \$70,000, which will be immediately due and owing.

(8) Respondent certifies that there is no authorized employee representative, at Respondent's workplace. It is hereby further certified by Respondent that this Settlement Agreement has been served on employees, by posting this agreement on 8/18/05 in a place where the Citation is required to be posted, in accordance with Rules 7 and 100 of the Commission's Rules of Procedure.

(9) None of the foregoing agreements, statements, stipulations, and actions taken by Respondent shall be deemed an admission by Respondent of the allegations contained within the Citation, Notification of Penalties and the Complaint herein. The agreements, statements, stipulations, findings and actions taken herein are made for the purpose of settling this matter economically and amicably and they shall not be used for any purpose, except for proceedings

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and matters arising under the Occupational Safety and Health Act (29 USC 651, et seq.).

(10) Each party hereby agrees to bear its own fees and expenses incurred by such party in connection with any stage of this proceeding.

DAVID'S FLOOR SERVICE, INC.

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BY David Dang
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David's Floor Service, Inc.

BY Minh Dang
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Dated: 8/18/2005

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